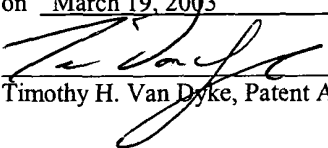


DAC #9

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to:
Commissioner for Patents, Washington, D.C. 20231

PETITION UNDER 37 CFR § 1.10(d)
Docket No. UF-10287
Serial No.: 09/804,484

on March 19, 2003

Timothy H. Van Dyke, Patent Attorney

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Examiner : Russel, Jeffrey E
Applicant : Grant Maria
Serial No. : 09/804,484
For: Composition For Treating Diabetic Retinopathy and Methods of Using Same
Docket No : UF-10287

Commissioner for Patents
Washington, D.C. 20231

PETITION TO CORRECT FILING DATE UNDER 37 CFR § 1.10(d)

Applicant hereby respectfully requests and petitions that the filing date of the above-captioned application be corrected from March 13, 2001 to **March 12, 2001** under 37 CFR § 1.10(d). Furthermore, Applicant requests that a corrected filing receipt be issued reflecting March 12, 2001 as the filing date. Set forth below are the grounds for which Applicant is entitled to the March 12, 2001 filing date.

I. Petition under 37 CFR § 1.10(d)

37 CFR 37 CFR § 1.10(d) provides that:

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official

notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail", and

(3) The petition includes a showing which establishes, to the satisfaction of the commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

(1) The discrepancy between the filing date the USPTO accorded the above-captioned application and the actual filing date only recently (March 12, 2003) came to attention of the undersigned Attorney for Applicant. Applicant files this Petition to correct the filing date only a week after Applicant became aware of the problem. It was during the preparation of a response to an office action, and analyzing rejections contained therein, that the undersigned Attorney became aware that there was a discrepancy between the filing date accorded and the actual filing date. This is the reason why there was a long period between the date that the filing date error occurred and the date Applicant became aware of that error. Accordingly, Applicant respectfully asserts that the present petition was filed promptly as soon as Applicant became aware of an error in the filing date, thereby satisfying the requirement under 37 CFR 1.10(d).

(2) Provided with this Petition is a copy of the Application transmittal page (Exhibit A) which contains the Express Mail Label No. ET321924891US. This number was provided on the Application Transmittal sheet prior to the original mailing by "Express Mail".

(3) Evidence from the U.S. Postal Service clearly demonstrates, in accordance with the relevant rules, that the subject correspondence was submitted to the "Express Mail Post Office to Addressee" service on March 12, 2001 before the last scheduled pickup.

Under 37 CFR 1.10(d)(3), a showing to establish the requested March 12, 2001 filing date "must be corroborated by [a] evidence from the USPS or [b] evidence that came into being after deposit...". In this case, Applicants do not have in their possession a copy of the Express Mail Label that was returned to Applicant by the USPS. The USPS appears to have failed to properly return this to Applicant. Accordingly, Applicants do not know whether the wrong date was put on the Express Mail Label or whether the date was omitted. However, the following evidence demonstrates by force of logic and logistics, that the package bearing express mailing label number ET321924891US ("the package") was submitted to the "Express Mail Post Office to Addressee" service on March 12, 2001, in Orlando, FL, before the last scheduled pickup. Specifically, Applicant submits herewith Exhibit B, a report from the USPS showing that the package was received in the Patent Office at 10:40 A.M. on March 13, 2003. This is the morning delivery immediately after the day (March 12, 2001) which Applicant asserts the undersigned filed the application in Orlando, FL.

Further, Applicant provides Exhibit C, which is an affidavit of Mr. Timothy H. Van Dyke, a patent attorney (reg. No. 43,128). In his affidavit, Mr. Van Dyke declares that the package was submitted to the "Express Mail Post Office to Addressee" service on March 12, 2001, in Orlando, FL, before the last scheduled pickup. Together, Exhibits B and C demonstrate that the package must have been filed on March 12, 2001. Logistically, it would be impossible for the package to have been received by the Patent Office on March 13, 2002, if the package had been deposited with the USPS in Orlando, FL that same morning.¹ Therefore, logic and

¹ The undersigned attests to the fact that all correspondence to the USPTO on March 12, 2001 was mailed out from Orlando, FL. To further illustrate the point, even if an Express Mail Package were deposited in a D.C. express mail deposit box the morning of March 13, 2001, it could not have been received by the Patent Office at 10:40 A.M. on March 13, 2001.

common sense dictate that the package was in fact deposited with the USPS before March 13, 2001. The sworn testimony evidence of Mr. Van Dyke and the corroborating USPS evidence are internally consistent. This evidence demonstrates that March 12, 2001 was the day in fact that the package was deposited with the Express Mail to Post Office to Addressee service.

Based on the foregoing, Applicant asserts that she has provided evidence, including corroborating USPS evidence that shows that the subject application was filed on March 12, 2001, pursuant to 37 CFR § 1.10(d)(3). Accordingly, Applicant respectfully requests that Patent Office grant this Petition under 37 CFR § 1.10(d) to change the filing date of the subject application from March 13, 2001 to **March 12, 2001**. Furthermore, Applicant respectfully requests that the USPTO issue a corrected filing receipt that reflects March 12, 2001 as the filing date of the subject application.

If clarification is needed on any aspect of this Petition, or if the Patent Office needs additional information, please contact the undersigned.

Respectfully submitted,



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